IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 62

JOACHIM HENDRIK FISSER, Her Engines, Tackle, Apparel, etc., *Petitioner*,

AGAINST

NACIREMA OPERATING CO., INC., *Respondent*.

CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOHN H. DOUGHERTY,
Proctor for Petitioner Vessel
Warner Building,
Washington 4, D. C.

VICTOR S. CICHANOWICZ,
CHARLES N. FIDDLER,
On Brief.

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CASES CITED

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NACIREMA OPERATING CO., INC., *Respondent*.

CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, *SS Joachim Hendrik Fisser*, respectfully prays that a writ of certiorari be issued to review the judgment of the Court of Appeals for the Third Circuit in the proceeding docketed in said Court of Appeals as No. 12,140 insofar as such judgment did not consider the question of the right of the petitioner to indemnity against

Nacirema Operating Co., Inc., the respondent-impleaded. This petition, however, is prayed for only in the event that a writ of certiorari is granted to the libelant, in which event the entire case may be determined by this Court.

Opinions Below

The opinion of the United States District Court for the District of New Jersey is officially reported at 142 F. Supp. 389. The opinion of the United States Court of Appeals for the Third Circuit, reversing the decision of the District Court and dismissing the libel, is reported at 249 F. 2d 818. The opinion of the United States Court of Appeals for the Third Circuit, denying libelant's petition for a rehearing, is reported at 249 F. 2d 821.

Jurisdiction

The judgment of the Court of Appeals was entered on September 30, 1957. The petition for a rehearing was denied by the Court of Appeals on December 5, 1957. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

Petitioner's application for an extension of time for filing this petition was granted by the Honorable William J. Brennan, Jr., Associate Justice of the United States, by order dated March 1, 1958 but without thereby determining the timeliness of said application.

Question Presented

The only question which would be involved in this application, if libelant's petition for a writ of certiorari should be granted, is whether the vessel would be entitled to recover indemnity from the respondent-impleaded for a breach on the part of the respondent-impleaded of its warranty to render workmanlike service on board the vessel *Joachim Hendrik Fisser*.

Statement of the Matter Involved

Suit was commenced by the libelant by the filing of a libel and the attachment in rem of the vessel *Joachim Hendrik Fisser* on January 4, 1954. On January 5, 1954, the Master of the vessel filed claim to said vessel on behalf of the owner, Hendrik Fisser Aktien Geselschaft. On the filing of its answer, the vessel also filed a petition impleading Nacirema Operating Co., Inc., the contract stevedore and libelant's employer, pursuant to the 56th Admiralty Rule of this Court.

At the time of his accident, the libelant, John H. Crumady, as well as other longshoremen in the employ of Nacirema Operating Co., Inc. were working on board the vessel discharging timber pursuant to a written contract under which Nacirema Operating Co., Inc. obligated itself specifically to unload the vessel *Joachim Hendrik Fisser* in accordance with the terms and conditions therein expressed.

Under this contract, among other things, Nacirema Operating Co., Inc. undertook "to faithfully furnish such stevedoring services as might be required" and obligated itself to:

> "b. Provide all necessary stevedoring labor, including winchmen, hatch tenders, tractor and dock crane operator, also foremen and such other stevedoring supervision as was needed for the proper and efficient conduct of the work."

This contract was entered into on December 30, 1953. It was made on the vessel's behalf by the agent for the time charterer of the vessel.

The libelant's petition for a writ of certiorari which has already been filed with this Court urges that a writ should be granted in his favor and the decision of the Court below reversed because the failure of the stevedore to render workmanlike service rendered the vessel unseaworthy. While under the facts of this case this concept is not conceded and, as will be shown in the vessel's brief in opposition to libelant's petition for a writ of certiorari, is contrary to the principles of law as defined by this Court, the question of indemnity is vital to a complete determination of this case. Thus, if the petition of the libelant should be granted, it would be in the interest of justice also to grant the cross-petition of the vessel for a writ of certiorari.

Reasons for Granting the Vessel's Writ

1. In *Ryan Stevedoring Co.* v. *Pan Atlantic S.S. Corp.*, 350 U. S. 124, this Court held that where, under a stevedoring contract, the stevedore obligates itself to "faithfully furnish such stevedoring services as may be required" and to provide all necessary labor and supervision for "the proper and efficient conduct of the work", such language constitutes "a contractual undertaking to (perform) 'with reasonable safety' " (350 U. S. at 130) and to discharge "foreseeable damages resulting to the shipowner from the contractor's improper performance" (350 U. S. at 129, footnote 3). See also *Weyerhaeuser Steamship Co.* v. *Nacirema Operating Co., Inc.*, 355 U. S. 563 (1958).

Thus, if, as the libelant contends, the negligence of the stevedore created the conditions which brought about the libelant's accident, the stevedore breached its contractual undertaking to perform with reasonable safety and should, therefore, indemnify the vessel for the damages resulting from the improper performance of the contract.

The fact that the stevedoring contract was made on behalf of the vessel by the agent of the time charterer does not bar indemnity. This Court also in *Ryan Stevedoring Co.* v. *Pan Atlantic S.S. Corp.*, 350 U. S. 124, held that the stevedore's warranty of workmanlike service was comparable to a "manufacturer's warranty of the soundness of its manufactured product" (350 U. S. at pp. 133-134) and because of this held that the shipowner, on whose behalf the stevedore contracted to perform the stevedoring services, was entitled to indemnity. Since, under the established law, it is fundamental that a manufacturer's warranty does not extend only to those with whom the vendor or manufacturer is in direct privity but goes beyond that relationship and includes within the privity anyone receiving the goods, the stevedore's warranty of workmanlike service here also necessarily includes the vessel.

It would thus be contrary to the established law to subject the vessel to a liability predicated on a maritime lien which the stevedore's breach of duty imposed but deny the vessel the legal right to obtain redress from the stevedore whose acts created the lien solely because the vessel, for whose explicit benefit the contract was made, being an inanimate object, was unable to go through the physical act of itself making the contract with the stevedore.

2. In *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85, 89, this Court noted that it was precluded from making any determination with respect to the possible rights and liabilities as between the indemnitor and indemnitee because one of the necessary parties thereto was not named in the

case before the Court nor served, as was evidently required. In order to obviate this difficulty here, the vessel, therefore, prays that its cross-petition be granted so that this Court may be in a position to determine the rights and liabilities of all the parties in the event the libelant obtains the relief he has prayed for and thereby avoid a circuity of actions.

CONCLUSION

This Court should therefore, grant the petition of the vessel and the claimant and determine that the respondent impleaded below breached its warranty of workmanlike service and should indemnify the vessel.

Respectfully submitted,

JOHN H. DOUGHERTY,
Proctor for Petitioner Vessel

VICTOR S. CICHANOWICZ,
CHARLES N. FIDDLER,
On Brief.

APPENDIX TO CROSS-PETITION

Opinion of the Court

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 12,138
No. 12,139
No. 12,140

JOHN H. CRUMADY, APPELLANT IN No. 12,138

v.

JOACHIM HENDRIK FISSER, HER ENGINES, TACKLE, APPAREL, ETC., AND JOACHIM HENDRIK FISSER AND/OR HENDRIK FISSER,

Respondents

v.

NACIREMA OPERATING CO., INC., IMPLEADED RESPONDENT-APPELLANT IN No. 12,140
HENDRIK FISSER AKTIEN GESSELSCHAFT, CLAIMANT-APPELLANT IN 12,139

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued June 13, 1957

Before MARIS, STALEY and HASTIE, *Circuit Judges.*

(Filed September 30, 1957)

Appendix to Cross-Petition

HASTIE, *Circuit Judge.*

Proceeding in rem against the ship Joachim Hendrik Fisser, the libellant Crumady has sued in admiralty to hold the ship and its owners responsible for personal injuries suffered by him while working on the ship as a stevedore employed by Nacirema Operating Co. in the unloading of the vessel at a berth in Port Newark, New Jersey. The respondent impleaded libellant's employer, Nacirema Operating Co., seeking thereby to obtain indemnification for any loss it might suffer through this suit.

After full hearing the court held the ship liable, ruling that one factor which contributed to the accident was the unseaworthiness of certain equipment of the ship. The court also allowed the ship to recover over against Nacirema, the party whose negligence, in the court's view, was the "sole, active or primary cause" of the accident.

Each of the parties has appealed. The ship challenges the ruling as to unseaworthiness. Nacirema claims that in any event there was no basis for holding it to indemnify the ship. The libellant complains that the amount of the award was erroneously determined and grossly inadequate.

We consider first the way the issue of unseaworthiness arose and was determined. The libel itself asserted a claim in admiralty for injury caused by the negligence of a ship and its owners, and nothing else.[1] There was no claim

1. Since *Pope & Talbot, Inc.* v. *Hawn*, 1953, 236 U. S. 406, it has been authoritatively established, if not unanimously agreed, that admiralty affords an injured workman so situated as libellant two distinct causes against the ship, one for negligent injury and the other for injury caused by the unseaworthiness of the vessel, although, of course, there can be only one recovery of damages for the same personal injuries.

that unseaworthiness caused the accident or even that any unseaworthy condition existed. However, discussion at a pre-trial conference seems to have led the court to conclude that libellant's contentions included a claim predicated upon unseaworthiness. In any event, the transcript of the trial judge's statement at the conclusion of the pre-trial conference shows that he undertook to frame the issues, saying, apparently with the acquiescence of the parties, that the libellant "contends in effect that the injuries complained of resulted from the unseaworthiness of the vessel. . . ." In addition, the court made it clear that the structure alleged to have been unseaworthy was a cable or topping-lift which parted causing a boom which it supported to fall upon the libellant. Thereafter, libellant's proof was directed at establishing that the topping-lift was worn and defective and, for that reason, parted under the strain of lifting cargo which sound gear would have withstood.

The evidence relevant to this theory of liability was conflicting and the court, with adequate basis in the record, found as a fact that the topping-lift was not defective but "was adequate and proper for the loads for which the rest of the gear was designed and intended". The court also found quite properly that Nacirema's employees, libellant's fellow stevedores, were negligent in their conduct of the unloading operation. More particularly, attempting to lift long and heavy timber from the hold they permitted the load to catch under the coaming at the margin of the hatch from which it was being removed. In addition, though forbidden to change the position of the head of the boom which the crew of the vessel had placed over the center of the hatch, they had changed the attachment of the preventer and guy which controlled the position of the boom so that

the head of the boom was no longer over any part of the hatch but had been moved a distance to port of the hatch opening. The excessive and abnormal strain which this incorrect procedure imposed upon the topping-lift will be discussed later. It suffices to point out now that the court with justification attributed the accident primarily to this negligence of Nacirema.

But having thus eliminated the basis of unseaworthiness formulated at pre-trial, the court found and adopted a new theory of the ship's unseaworthiness and responsibility which libellant had not pleaded and, so far as we can determine, had not attempted to establish in his proof. An understanding of the court's reasoning requires the consideration of additional circumstances not heretofore mentioned.

The gear being used at the time of the accident was rated and approved to lift a load of three tons or less. In the actual unloading operation a cable, called a cargo runner, was attached to the object to be lifted from the hold. This runner extended upward over a block at the end of a boom high above the hold and thence to and around a winch powered by an electric motor. The electrical equipment in this case included an automatic circuit breaker which stopped the flow of power to the winch whenever the current built up beyond the amperage for which the device had been set. Witnesses were asked to relate the cut off amperage to the strain imposed upon the winch by the load it was lifting. The witnesses agreed that the cut off was set so that if the motor should be required to overcome a strain on the cargo runner somewhat in excess of six tons the current would quickly build up to the setting of the circuit breaker and the motor would automatically cut off. In this case, the motor did cut off, apparently just before the topping-lift parted.

Appendix to Cross-Petition

The libellant seems to have introduced testimony about the cut off device in an effort to show that the power was cut off before the gear was subjected to any greater strain that it should have been able to withstand. But in analyzing this testimony, much of which was a rather confused discussion of "load" and "torque" and other electrical concepts induced by questions addressed to the witnesses as though the concepts were mechanical rather than electrical, the court concluded that it was unsafe practice, rendering the gear unseaworthy, to have the cut off set so that the circuit would not be broken until the tension in the cargo runner should exceed six tons. In other words, the court thought the rating of the gear to handle a cargo load of three tons indicated that it was unsafe to have the circuit breaker so set that the cargo runner might be subjected to a six ton strain.

While the court's reasoning was in accord with an opinion expressed by a witness, the application of mathematics to the undisputed facts requires the rejection of that opinion and the acceptance of other testimony, based in part upon a Coast Guard standard for the setting of such a control, indicating that the setting of the cut off device was entirely safe and proper. The testimony was clear and undisputed that hoisting gear of the kind in suit is rated to lift a load not more than one fifth of the strength of the cable itself. Thus, gear rated to handle a three ton load utilizes cable adequate to withstand a strain of fifteen tons. Such cable was used here. It is clear, therefore, that subjecting the cargo runner to a strain of six tons did not in itself create any undue risk of breakage. Indeed, as the testimony shows and the laws of physics teach, inertia, friction and the normal circumstances of operation make it necessary that substantially more than a three ton strain

be imposed upon the gear before a three ton loan can be lifted. Thus, the electrical equipment must and safely can impose a strain on the runner much greater than the weight to be lifted.

This was demonstrated by what happened in the present case. A strain of six tons or more on the cargo runner had no effect on that cable. The circuit breaker cut off the power at that point, while the strain was still well within the capacity of the cable. By the same token, if this operation had been conducted normally and properly the strain on the topping-lift would have been well within its capacity when the circuit breaker intervened. For this part of the gear also was rated to handle three tons of cargo and thus could withstand a fifteen ton strain.

The decisive fact, as the court found, it, was that the employees of Nacirema had so changed the position of the head of the boom as to seriously distort the normal composition of forces which is presented by a straight lifting operation. It was for this reason that the topping-lift was subjected to an enormous, abnormal and unanticipated strain. On the basis of expert testimony the court found as a fact that this strain was somewhere between seventeen and twenty-one tons, three or four times the strain then being imposed on the cargo runner and the winch.

This analysis leads to two conclusions. It was a proper finding that the negligence of the stevedores was "the sole active or primary cause" of the parting of the gear. But we think it is equally clear that the court erred in the next step of its reasoning, that this negligence of Nacirema "brought into play the unseaworthy condition of the vessel". The concept of seaworthiness contemplates no more than that a ship's gear shall be reasonably fit for its

intended purpose.[2] Applied to the present facts, this means that the setting of the electrical circuit breaker could make the gear unseaworthy only if there was reason to fear that a strain of about six tons on the running gear, which would activate the cut off, would subject cable of fifteen ton capacity in the topping-lift to a dangerous strain. There is nothing in this record which suggests that such an eventuality was reasonably to be feared or anticipated. Thus, the gear was not proved to have been unseaworthy, neither was the setting of the cut off devise established as a legal cause of the accident which occurred.

A decree should have been and now must be entered denying the libellant recovery. In these circumstances we do not reach the substantial question raised by the impleaded respondent whether there would have been legal basis for making it an indemnitor, had the ship's liability been sustained.

The judgment will be reversed.

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2. *The Silvia*, 1898, 171 U. S. 462; *Doucette* v. *Vincent*, 1st Cir. 1952, 194 F. 2d 834; see *Berti* v. *Compagnie de Navigation Cyprien Fabre*, 2d Cir. 1954, 213 F. 2d 397, 400. *Cf. The Daisy*, 9th Cir. 1922, 282 Fed. 261.

Judgment

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed.

Attest:

IDA O. CRESKOFF,
Clerk

September 30, 1957

Appendix to Cross-Petition

Opinion of the Court on Petition for Rehearing

(Filed December 5, 1957.)

Before BIGGS, *Chief Judge*, and MARIS, STALEY and HASTIE, *Circuit Judges*.

PER CURIAM:

A petition for rehearing is presented for our consideration on a theory of unseaworthiness which seems not to have been advanced in the trial court and has not heretofore been urged on this appeal. We find no such merit in this or any other contention as would warrant a rehearing. Accordingly, the petition for rehearing is denied.

BIGGS, *Chief Judge*, dissenting.

My brother Hastie's succinct opinion expressing the majority view as to why the accident to Crumady occurred raises an issue which requires rehearing before the court *en banc*. The majority opinion correctly concludes that Crumady was injured because a seaworthy boom, topping lift and tackle were employed to lift cargo from the vessel's hold but because the boom and topping lift were wrongly positioned by the stevedoring crew too great a strain was put on the boom and topping lift causing the topping lift to break.

Petterson v. Alaska S.S. Co., 205 F. 2d 478 (9 Cir. 1953), aff'd *per curiam* 347 U. S. 396 (1954), held that the responsibility of the ship owner was not shifted to the stevedoring crew because that crew brought on board and made use of a defective block which caused Petterson's injuries. The Court of Appeals for the Second Circuit in Grillea v.

United States, 232 F. 2d 919 (1956), held that where longshoremen placed a seaworthy, but wrong, hatch-cover over a "padeye", and thereafter a longshoreman stepped on the hatchcover which gave way under him, causing him serious injuries, the ship was liable. In the case at bar, it would appear that a logical and necessary extension of the principles enunciated in Seas Shipping Co. v. Sieracki, 328 U. S. 85 (1946), and in Petterson, would require the holding that the ship was liable for the wrongful positioning of the boom and the topping lift despite the fact that the stevedoring crew, of which Crumady was a member, placed the boom and the topping lift in position. This is a doctrine to the effect that a "seaworthy" round peg placed in a "seaworthy" square hole will render the whole unseaworthy. While it does not appear how long a time elapsed between the positioning of the boom and the topping lift and the occurrence of the accident in the case at bar, it is clear that some time necessarily elapsed.

For these reasons I conclude that rehearing should be had before the court *en banc*.

Order Sur Petition for Rehearing

Present: BIGGS, *Chief Judge*, and MARIS, STALEY and HASTIE, *Circuit Judges*.

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

Attest:

IDA O. CRESKOFF,
Clerk.

Dated: December 5, 1957

Appendix to Cross-Petition

Stevedore Contract Referred to by District Court

(Appellant's Appendix 33a)

This agreement, made and entered into this 30th day of December, 1953 between Insular Navigation Company as Owner, Operator, Charterer or Agent, and Nacirema Operating Co., Inc. Contractor, will govern, the discharging and/or loading of vessels owned, operated or otherwise controlled by Insular Navigation Company at the Port of Port Newark, New Jersey effective December 30, 1953 and the Contractor undertakes to faithfully furnish such stevedoring services as may be required upon such vessels as are assigned to the Contractor, at the agreed rates, terms, and conditions specified below:

DISCHARGING

385,000 Board Feet Nicaraguan Pine from m.v. "Joachaim Hendrik Fisser" scheduled to arrive Port Newark January 2.

Rate: $4.75 Per thousand BM if stowed fore and aft.

Rate: $5.75 Per thousand BM if stowed crisscrossed.

Contractor agrees to furnish service of delivery clerk during discharge of vessel at actual cost plus 10% for overhead and supervision.

1. TYPE OF VESSELS: The stevedoring rates specified in this agreement apply to cargo vessels including those vessels with minimum passenger accommodations.

2. COMMODITY RATE INCLUSIONS: As part of the foregoing specified rates, the Contractor agrees to include in the commodity rates the following described services:

Appendix to Cross-Petition

a. Transport Contractor's gear and equipment to and from the pier where the vessel is berthed, excepting locations that are inaccessible to motor trucks.

b. Provide all necessary stevedoring labor, including winchmen, hatch tenders, tractor and dock crane operators, also foremen and such other stevedoring supervision as are needed for the proper and efficient conduct of the work.

c. Adjust rigging of booms and guys, etc., at hatches where work of discharging and/or loading will be conducted and unrigging when completed, also removing and replacing beams and hatch covers.

d. Discharge cargo from or load cargo into vessel's holds, tween decks, on deck, shelter or bridge spaces, deep tanks, cargo lockers and lazarettes, also temporary bunker spaces, but excluding fore and aft peaks and bilges.

e. Shift gangs as required between inshore and offshore, also from lower to upper floor (or vice versa) on double deck piers. Shift lighters into working position after they have been placed alongside vessels, when this can be done without tugs.

f. Sort (by longshoremen) and stack cargo man high on pier upon discharge of vessel or break down cargo from man high on pier upon loading of vessel.

g. Perform such long trucking as required within limits of pier where vessel is berthed—limited to the section occupied by the vessel, should the pier have multiple sections.

h. Load and lay dunnage boards (except freighted dunnage lumber) as required during loading for proper stowage of cargo.

i. Work two gangs simultaneously in hatches when required and when practical to do so, provided necessary additional booms, falls and winches are supplied by vessel or from shore facilities.

3. Extra Labor Services: When required to supply extra labor, the Contractor will render its charges therefor upon the basis of the labor cost incurred plus 10% and insurance at 15½% for the following described services:

a. Handling ship's lines and gangways.

b. Cleaning ship's holds.

c. Discharging excess dunnage or debris.

d. Tiering cargo on pier above man high upon discharge of vessel or breaking down cargo on pier to man high upon loading of vessel.

e. Loading or discharging ship's stores, material or equipment, mail, baggage, specie, bullion, livestock, animals, live poultry and birds.

f. Carpenter or coopering work of any nature.

g. Handling and placing flooring or timbers for heavy lifts or for use by carpenters.

h. Services of Harbormaster for the berthing and unberthing of lighters.

i. Lashing and shoring cargo.

j. Bolting and unbolting tank lids.

k. Battening down hatches when called upon to do so upon completion of the vessel.

l. Rigging and unrigging heavy lift booms.

m. Supplying extra labor for any other services when authorized.

4. RIGGING/UNRIGGING HATCH TENTS: When required to use hatch tents, the Contractor will charge $20.00 per tent to represent the initial rigging and final unrigging combined; and no charge will be made for intermediate rigging or unrigging of the tent during the working of the vessel.

5. INCOME FROM HANDLING LIGHTERS AND CARS: The Contractor shall collect and retain its customary charges for labor services in connection with the loading and unloading of railroad cars, lighters, barges and scows.

6. EQUIPMENT: The ship is to supply booms, adequate winches, in good order and with sufficient steam or current for their efficient operation; blocks, topping lifts, guys; wire or rope falls of sufficient length and strength, hatch tents, lights for night work; tugs; derricks or cranes for such heavy lifts as exceed the capacity of the ship's gear, and cranes in the absence of ship's winches. The ship is also to supply dunnage, paper and all material for shoring and lashing cargo as well as grain bags and separation cloths.

The Contractor is to supply all other cargo handling gear and equipment, such as hooks, pendants, save-alls, nets, trays, bridle chains and slings (except slings for heavy lifts when hoisted by heavy lift floating or shore derrick) also hand trucks, mechanical trucks or tractors,

also dock tractor cranes as needed for efficient stevedoring work.

7. INSURANCE: The Contractor agrees to carry and include in the rates herein specified, Workmen's Compensation Insurance for the unlimited protection of its employees under State and Federal Laws, also Public Liability Insurance for the protection of third parties who have suffered, or alleged to have suffered death or bodily injuries thru the acts of the Contractor's Employees, such Public Liability Insurance to be in the amount of $50,000 for bodily injury or death of one person, and $150,000 for death or injury to more than one person in a single accident.

The rates specified herein also include Social Security Taxes and Unemployment Insurance as presently payable by the Contractor. Whenever actual labor wages are to be charged for by the Contractor under this agreement, the Social Security Taxes and Unemployment Insurance incurred thereon shall be added to charges for Workmen's Compensation and Public Liability Insurances, and all such charges shall be termed "Insurance".

8. RESPONSIBILITY FOR DAMAGE OR LOSS: The Contractor will be responsible for damage to the ship and its equipment, and for damage to cargo, or loss of cargo overside, through its negligence. When such damage occurs to ship or its equipment or where loss or damage occurs to cargo by reason of such negligence, the Ship's officers or other authorized representatives will call this to the attention of the Contractor at time of accident.

Property Damage Insurance in an amount of $1,000,000 with deductible amount of not over $10,000.

9. DETENTIONS, WAITING, LAY TIME: Whenever work is interrupted after starting and detentions of not over 20 minutes duration occur, the Contractor will make no charge for reimbursement therefor. Should such detention time exceed 20 minutes duration, the Contractor will charge for the full detention time at labor cost plus insurance. When men are employed and unable to work through causes beyond the Contractor's control, or when men are to be paid for a minimum working period in accordance with the wage agreement, the cost of such waiting or idle time will be charged for by the Contractor at labor cost, plus insurance at 15½%.

10. OVERTIME: When overtime hours are worked, the additional wages thereby incurred and paid to all labor and other stevedoring personnel so employed, will be charged for by the Contractor at cost, plus insurance.

In the event that, under any Government Order or final determination by a court of competent jurisdiction, labor is required to be paid wages in excess of the wages paid under the Federal Fair Labor Standards Act as presently interpreted throughout the port, such wages plus insurance and social security and unemployment taxes together with any additional amount other than wages for which the Contractor may be legally liable under the Act, shall be reimbursed to the Contractor by the Owners, Agents, or Charterers at cost.

11. TRAVEL TIME AND TRANSPORTATION: When the Contractor is required to work at locations where travel time

is required to be paid the men, in accordance with the wage scale, such travel time will be charged for at cost, plus insurance. When vessels are worked in the stream or other places where means of transportation for the men are required or meal allowances must be paid in accordance with the wage agreement, any expense so incurred will be charged for at cost.

12. STRIKES, ETC.: In the event of strikes, lockouts, Union disputes or other labor difficulties, the Contractor will, if able to work, do so upon a basis of cost, plus 20% and insurance at 15½% in lieu of rates specified, unless notified by the Owners, Agents or Charterers that no work is to be performed.

13. INCREASE OR DECREASE IN WAGES: All rates specified are based on and subject to the employment of present longshore labor at the wage scale and working conditions existing in the port in the month of September 1953 under the International Longshoremen's Association Agreement. In the event of an increase or decrease in such wage scale or change in the present longshore labor or working conditions, the rates specified herein shall as a consequence be proportionately increased or decreased.

14. REHANDLING OR SHIFTING OF CARGO: The rates specified herein apply to one handling of cargo. When rehandling, resorting or shifting of cargo is necessary through no fault of the Contractor, the time required for such work will be charged for by the Contractor at cost, plus 10% for overhead and gear, plus insurance at 15½%.

15. DAMAGED CARGO: When handling cargo damaged by fire, water, oil, etc., and where such damage causes dis-

tress or obnoxious conditions, or in all cases where the men are called upon to handle cargo under distress conditions, the Contractor's charges are to be based on the labor cost in accordance with the International Longshoremen's Association Argeement, plus 20% for overhead, depreciation of gear, and profit, plus insurance at 15½% in lieu of the rates specified herein together with the cost of the gear destroyed and the cost of the equipment for the protection of the men as may be required.

16. Conditions of Cargo: If the condition of the cargo or packages is other than in customary good order, thereby delaying prompt handling, special arrangements shall be agreed upon in lieu of the rates herein specified.

17. Ammunition and Explosives: Are not included in this agreement.

18. Acts of God, War, etc.: No liability shall attach to the Contractor, if the terms of this agreement cannot be performed, due to the Acts of God, War, Governments, Fire, Explosion, or Civil Commotion.

19. This agreement may be terminated, modified or amended upon thirty days' notice by either party, provided, however, that notwithstanding any such termination, the Contractor shall continue to be responsible for the loading or discharging of any cargo which the Contractor is handling on the effective date of such termination. Termination of this agreement shall not affect or relieve either party of any liability or obligation that may have accrued prior thereto.

20. This agreement does not include any services of clerks or checkers.

INSULAR NAVIGATION COMPANY
Owner/Operator/Charterer/Agent

By: J. J. SMITH

NACIREMA OPERATING CO., INC.
Contractor

By: ANDREW G. DANTZLER
Andrew G. Danzler
Vice Pres.